IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL

CRIMINAL APPEAL NO. 55 OF 2004

Hari Mohan @ Inder Mohan Naithani
S/o Sri Brij Mohan Naithani,
R/o Nai Basti, Patel Nagar,
Raturi Shaheed Marg, Patel Nagar,
District Dehradun …….
Appellant

Versus

State of Uttaranchal …….
Respondent

Hon'ble J.C.S.Rawat, J.

This is a criminal appeal against the judgment and order dated 07.02.2004 passed by Sri Ram Singh, Addl. Sessions Judge/F.T.C. 1st, Dehradun in S.T. No. 62/2003 State Vs. Hari Mohan whereby the appellant was convicted and sentenced U/s 324/457 I.P.C. to undergo rigorous imprisonment for 2 years and a fine Rs. 500/-. In default of payment the appellant to undergo 6 months additional rigorous imprisonment.

The facts, in brief, are that Jaipal Singh, Advocate (P.W.1) lodged a written report at P.S. Kotwali, Dehradun on 20.03.2003 at 11.00 a.m. that he resides at Vijay Raturi Marg, Nai Basti, Patel Nagar, Dehradun and he rented out one room to the appellant and the appellant has constructed his own house. The complainant P.W.1 asked the appellant several times for vacating the said room, but he was ready to quarrel. On 19.03.2003 at about 9.00 p.m. the appellant Hari Mohan entered in his room forcibly having Gandasa in his hand and abused him and with intend to kill him, attacked the complainant on his head

by Gandasa. Hari Mohan Naithani when was attacked on him then the electricity was on. He had seen the entire incident in the light of electricity. At the time of incident Uma Prasad and others were present. The complainant PW1 received injuries on his head. The blood oozed out and the injured became unconscious. The inured was admitted in Doon Hospital and got his treatment in Doon Hospital. The complainant PW1 when gained consciousness wrote the report. On the basis of written report (Ex.ka1), F.I.R. (Ex.ka6) was prepared and a case was registered against the appellant vide G.D. entry Ex.ka 8.

Jaipal Singh injured was examined by Dr. Viraj Sah(PW5) on 19.03.2003 at 10.00 p.m. and prepared injury report (Ex.ka3). The following injures were found on the person of Jaipal Singh.

1. Lacerated wound 2.5 cm x 0.5 cm on left side forehead 4.0 cm above from left eyebrow with oozing of blood.
2. Lacerated wound 3.0 x 0.5 cm left side head 4.0 cm above from injury (1) with oozing of blood.
3. Incise wound with sharp edges 3.0 cm x 0.5 cm right side back of head, 7 cm from right ear with oozing of blood.

In the opinion of the doctor the injuries No.1 & 2 were fresh and caused by hard blunt object and injury No. 3 sharp object.

The Investigation was entrusted to S.I. Om Prakash (PW6). He visited the place of occurrence and prepared site plan (Ex.ka 4). He prepared recovery momo Ex. Ka2 for taking in possession the bloodstained clothes of the injured. After completing the

Investigation, charge sheet Ex. Ka5 was submitted by the Investigating Officer against the accused appellant.

Charge U/s 457 and 307 I.P.C. was framed against the accused appellant to which he denied and claimed trial.

The prosecution in support of its case examined PW1-Jaipal Singh, Complainant who is the injured person and also lodge F.I.R., PW2-Uma Prasad Raturi, is the eyewitness, PW3-Meharban Singh and PW4-Swaraj Singh Rawat, are the witnessess in whose presence the recovery of clothes of the injured was made, PW5-Dr. Viraj Sah examined the injuries to the injured, PW6-S.I. Om Prakash investigated the case and submitted the charge sheet against the accused.

The learned trial court after appraisal of the entire evidence and record held the accused appellant guilty U/s 324 & 427 I.P.C. and sentenced the appellant as mentioned above.

I have heard the learned counsel for the appellant and the Learned A.G.A. on behalf of the State and gone through the record.

At the outset I have to examine whether the appellant sustained any injury on the date of incident or not. The prosecution examined PW5 Dr. Viraj Sah, who examined the injured and found the following injuries on the person of the injured Jaipal Singh.

1. Lacerated wound 2.5 cm x 0.5 cm on left side forehead 4.0 cm above from left eyebrow with oozing of blood.
2. Lacerated wound 3.0 x 0.5 cm left side head 4.0 cm above from injury (1) with oozing of blood.

3. Incise wound with sharp edges 3.0 cm x 0.5 cm right side back of head, 7 cm from right ear with oozing of blood.

In the opinion of the Doctor the injuries were fresh. The veracity of the medical report stands corroborated by the evidence of PW1 Jaipal Singh, injured who stated in his statement that the accused appellant Hari Mohan entered into his house having Gandasa in his hand and caused injuries on his head on 19.03.2003 at about 9.00 p.m. The evidence of PW1 Jaipal Singh stands further corroborated by the statement of PW2 Uma Prasad who also stated in his statement that he was present on the spot. He has stated that the injured was perusing the file in his room and the accused entered into his room with Gandasa in his hand. The accused caused injuries on the person of the injured. The injure became unconscious on the spot. He was brought to the Hospital where he was medically examined. Thus the above prosecution evidence clearly shows that the injuries were caused on the person of the injured.

Now the question for consideration is whether the injuries were caused by the appellant or not. The prosecution has adduced the evidence of PW1 Jaipal Singh and PW2 Uma Prasad who have stated that the accused entered into the room of Jaipal Singh having Gandasa in his hand. The accused caused injuries on the person of the injured. The injured became unconscious on the spot. It was further stated by PW1 Jaipal Singh that he got consciousness in the Hospital and thereafter he prepared a report typed by PW2. The report was sent to the Police Station and was lodged at P.S. Kotwali Dehradun at about 11.00 a.m. on 20.03.2003. Thus this fact further stands corroborated

by the prompt F.I.R., which also inspires confidence that it was not written after due consultation or deliberation. The F.I.R. in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence adduced at the trial. The object of insisting upon prompt lodging of the F.I.R. is to furnish the information at the earliest regarding the circumstances in which the crime was committed including the name of the actual culprit and the part played by the culprit and the weapon, if any used in the commission of the crime as well as the names of the eyewitnesses. The delay in lodge the F.I.R. is a creation of afterthought. On account of delay not only got the bereft of the advantage of circumstances also creased in the involvement of coloured version of exaggerated story. The prompt F.I.R. further stands corroboration that the injuries were caused by the accused.

It was further submitted that the presence of PW2 Uma Prasad on the spot is doubtful and he is a chance witness. The appraisal of the evidence of PW2 Uma Prasad clearly reveals that he was present at the time of incident as he took the injured to the Hospital and the doctor also indicated in the injury report that the injured was brought before him by Uma Prasad. Ex ka 3 injury report further corroborates the presence of PW2 on the spot.

It was further contended that the independent witness have not been produced by the prosecution. The said contention was refuted by the Learned A.G.A. PW1 Jaipal Singh has stated in his statement that Uma Prasad PW2 was present on the spot and others also came on the spot when the incident took place. It is not

necessary to produce all the witnesses only to multiple the evidence of the incident on the same point.

It has been held in **komal and others Vs. State of U.P. 2002 SCC (Cri) 1600** as under:-

"11. Learned counsel next contended that though, according to the statements of witnesses, some villagers had arrived at the place of occurrence when the members of the prosecution party were being assaulted and they intervened in the matter, none of them has been examined in the case on hand. In our view non-examination of these witnesses by itself would not affect the veracity of the prosecution case when the evidence of PWs 2 and 4, the two injured eyewitnesses who had received multiple injuries, has been found to be trustworthy and their evidence is corroborated by the informant PW5 and supported by medical evidence as well as objective finding of the investigating officer."

It has also been held in **Babu Ram Vs. State of U.P. 2002 SCC (Cri)/p/400** as under:-

"7. It was submitted by the learned counsel for the appellants that Ram Autar, an independent eyewitness present at the scene of occurrence according to the prosecution case and a government servant has not been examined, and therefore, an adverse inference should be drawn against the prosecution. It is settled law that non-examination of an eyewitness cannot be pressed into service like a ritualistic formula for discarding the prosecution case with a stroke of the pen. An effort should be made at appreciating the worth of such evidence as has been adduced. If the evidence coming from the mouth of the

eyewitnesses examined in the case is found to be trustworthy and worth being relied on so as to form a safe basis for recording a finding of guilt of the accused persons then non-examination of yet another witness who would have merely repeated the same story as has already been narrated by other reliable witnesses would not cause any dent or infirmity in the prosecution case. In the case at hand we additionally find from the testimony of Ashraf Lal that inspite of being a government servant and not involved in local village disputes he is afraid of deposing against the accused persons and there is substance n the submission of the learned counsel for the State that Ram Autar if tendered in the witness box would have followed the same track as was chosen by Ashraf Lal, PW3."

It was further contended by the learned counsel of the appellant that there was a dispute with regard to the appellant accused and the accused has been falsely implicated in the present case. It is not disputed that the accused is a tenant of Jaipal Singh PW1 and it has come in the evidence that the accused has constructed his own house and the complainant PW1 asked him to vacate the house. He did not pay any heed to his request. Thus there is enmity between the accused and the complainant PW1. Enmity is a double-edged weapon. Sometime it may help to the prosecution or sometime it may help to the accuse. In the present case the injuries were caused on the person of the injured. The animosity as alleged by the prosecution

reveals that it was the accused who caused the injuries on the person of the injures PW1.

The investigating officer also took the clothes of the injured in his possession from the Hospital, which further corroborates the incident as alleged by the prosecution. The evidence of the prosecution is credible and cogent.

In view of the above discussion, it is evident that the accused appellant has committed the offence punishable under sections 324 and 457 I.P.C. and the learned trial court rightly convicted and sentenced him under the above sections. There does not appear any illegality or infirmity in the impugned judgment and order.

The learned counsel for the appellant has contended that the accused has been sentenced by the learned trial court under section 324 and 457 I.P.C. to under two years rigorous imprisonment and a fine of Rs.500/- under each count and a lenient view may be taken in awarding the sentence. The learned counsel for the appellant has also submitted that the fine has already been deposited. The appellant is in Jail. It would be in the interest of justice that the appellant is sentenced to undergo rigorous imprisonment for sixteen (16) months under each count the sentences will run concurrently and the impugned order regarding sentence may be modified accordingly.

The appeal is dismissed. However, the sentence awarded by the learned trial court is modified and reduced to the extent that the appellant shall undergo rigorous imprisonment for sixteen months (16) instead of two years R.I. The fine will be deposited in the trial court if not already deposited.

Let the record of the court below be sent to the trial court alongwith a copy of this judgment immediately.

(J.C.S.Rawat J.)

5 August 2004